

Minutes of the Court of Revision Meeting
for the East Town Line Drain

A meeting of the Court of Revision for the East Town Line Drain was held on Tuesday, May 14, 2019, in the Council Chambers, 917 Lesperance Road, Tecumseh, Ontario at 6:00pm

1. Call to Order

The Mayor calls the meeting to order at 6:00 pm.

2. Roll Call

Present:

Mayor

Deputy Mayor

Councillor

Councillor

Councillor

Gary McNamara

Joe Bachetti

Brian Houston

Andrew Dowie

Tania Jobin

Absent:

Councillor Brian Houston

Councillor Rick Tonial

Also Present:

Chief Administrative Officer

Director Public Works & Environmental Services

Director Planning & Building Services

Director Corporate Services & Clerk

Director Fire Services & Fire Chief

Deputy Clerk & Manager Legislative Services

Deputy Treasurer & Tax Collector

Manager Engineering Services

Drainage Superintendent/Engineering Technologist

Margaret Misek-Evans

Phil Bartnik

Brian Hillman

Laura Moy

Doug Pitre

Jennifer Alexander

Tom Kitsos

John Henderson

Sam Paglia

3. Disclosure of Pecuniary Interest

There is no pecuniary interest declared by a Member of Council.

4. Introduction and Purpose of Meeting

The purpose of the meeting is to hear from any affected owner who wishes to appeal his/her assessment or any part thereof as set out in the Drainage Report, prepared by Mr. Mark Hernandez, P.Eng., of Dillon Consulting Ltd., dated February 13, 2019.

5. Delegations

The Drainage Superintendent/Engineering Technologist explains that he has received calls from affected landowners from Block C in the assessment schedule with inquiries on assessment and Drainage Act process. He was also notified by Ms. Jeannette Sylvestre via text message on the day of the consideration meeting of her concerns with their assessment which was deferred in correspondence with the Clerk via telephone/email to this meeting.

It is noted that at the consideration meeting, the schedule had Mr. Paul A. Adams' name spelled incorrectly and has since been corrected.

Jeff Sylvestre, Resident

Mr. Sylvestre is speaking on behalf of himself, his parents and their businesses. He expresses concerns on his financial assessment regarding the East Town

Line Drain. He bought the farm property, south of the train tracks in 2014 and requested that the drain be cleaned and a culvert be installed at that parcel. He had requested another culvert be installed and obtained a temporary entrance permit from the County of Essex into another parcel on Manning Road (County Road 19), next to 1951, to access the ten acres of institutional zoned property. Mr. Sylvestre proceeded to complete a traffic study to satisfy the requirements of the County of Essex permit and engineering design for the culvert, which satisfied the Essex Region Conservation Authority. He also contacted the County of Essex to obtain permission to install the culvert ahead of the drainage report. He notes that the drainage report was supposed to be completed in 2015. He was issued an entrance permit from the County in February of 2015. Since the culvert was a benefit to the Sylvestre's property, they understood that they would pay 100% of the costs. Mr. Sylvestre requested that they be allowed to install the culvert ahead of the report and therefore needed a permit from the County to complete the works on the County road right-of-way.

Mr. Sylvestre explains that in 2015 the Town brought forth the Development Charges By-law. He designed a solution for access to his property, and claims the consulting work was throwaway costs, as the ultimate solution was the development of the Manning Road Secondary Plan Area. He asked Administration to exclude the property from the development charges area.

The Development Charges By-law was passed on October 13, 2015 and the Sylvestre's objected to the by-law in November 20, 2015. He notes on December 17, 2015, the Director Public Works & Environmental Services, Dan Piescic, wrote a letter to the Essex Region Conservation Authority indicating that the Town owns a deeded parcel west of the proposed enclosure and does not support any enclosures in the drain in the absence of a development agreement. The right-of-way was a deeded parcel of land in 1994.

Mr. Sylvestre explains that there is an old development agreement which needs to be updated or amended. On December 22, 2015, the County advised Mr. Sylvestre that they are revoking their entrance permit. In response to the permit being revoked, he states that he tried to work with County Administration and the Town to get the entrance permit back so that they could proceed. For this permit, there were conditions the County wanted approved. In principle, Mr. Sylvestre approved them, but there was no point proceeding without the entrance permit. In 2017, the Drainage Report was brought forward. The Sylvestres requested that the culvert design be included in the report, but the work not be completed at this time. He explains that the Drainage Act does not allow their culvert design to be included in the report without the proposed work to be completed. This is not permitted under the Act, and Mr. Sylvestre requested that the culvert be removed from the report.

Mr. Sylvestre is assessed at \$51,000.00 for engineering work for the design of the culvert. The Sylvestres collaborated with Dillon Consulting in the original design with assistance with equipment measurements, since Dillon Consulting was doing the drainage report. He comments that this money has been wasted because the culvert could not be included in the report without the work completed, and that the work could not be completed because he does not have an entrance permit. Mr. Sylvestre is satisfied with everything in the report. His family's assessment is over \$430,000.00. The assessment of \$51,000.00 for design engineering, he feels is abuse.

Mr. Mark Hernandez, P.Eng, Dillon Consulting, explains that the request for the new culvert by Mr. Sylvestre was a fundamental part to their report. The Sylvestres have several needs along this drain, as they own several properties. Mr. Hernandez did proceed with the request to include all of the elements. A Draft report was presented to Council at a Public Meeting with Mr. Sylvestre's requests included in the design, cost, proposed work and property assessments. This report was ready to go and the assessed costs have already accrued.

Mr. Hernandez confirms that he received a call from Mr. Jim Sylvestre requesting the removal of the culvert from the report. Dillion Consulting was asked to do the work, accrued costs, and those costs do not go away. He added that there was additional costs once he received the request to remove the culvert. Mr. Hernandez explains the process of the cost assessment and the breakdown of the engineering costs.

The Mayor remarks that there is a discrepancy according to the Sylvestres on the \$51,000.00 assessment. There has to be some monetary value in the engineering work completed.

The Drainage Superintendent/ Engineering Technologist explains that there is work involved in any requests from a landowner to have a culvert. Dillon Consulting completed some engineering work, as they are the Engineer appointed on this project. Although the Sylvestres hired another Engineer to do the culvert design, Dillon Consulting worked with the Sylvestres' Engineer and provided some assistance with hydraulic capacity and performed a detailed analysis to establish the pipe sizing and location of the culvert so as to not adversely affect the Baillargeon drain as well. In requesting a culvert, there is engineering work and costs attached to it. If the culvert does not go in, the cost of administrative preparation and design remains. He notes that the Town's Administration did have a meeting with the Sylvestres when the culvert was to be included in the report at which time the Town advised they would object at the consideration meeting because Administration required details of what was happening on the west side of the requested culvert.

Mr. Sylvestre comments that he is not disputing the work completed or the value of the work. He would like to have the work completed and have the entrance put in. He notes that there is a development agreement registered on title on the property. Mr. Sylvestre agreed in a March 2016 meeting that they would bring the culvert to current standards. He wanted the Town to get the entrance permit reinstated and they did not. This is a difficult forum to argue his point because of the limitations of the Drainage Act.

Director Planning and Building Services confirmed that the old development agreement is not valid and that the requested access was to Town property. He further advised that there was significant correspondence between the Town's solicitor and the Sylvestres' solicitor regarding this matter.

Director Public Works & Environmental Services clarifies the letter from the former Director, specifically that indicated that as the owners of the adjacent parcel, the Town was not supportive of the issuance of permits (from ERCA or the County) for the drain enclosure in the absence of a development agreement; and that it was recommended to convene a meeting with ERCA and the County to further discuss the issue. There were several meetings with the County of Essex and the Essex Region Conservation Authority. The proposed drawings revealed some concerns with the design details for the road entrance that fronted the Town's property. As the discussions continued, Administration was cautious, as there was no development agreement issued and the drawings being presented depicted proposed road works on the Town's property, a parcel which is to be a future right-of-way. He notes that the Town is not in support of the culvert unless a development agreement is in place.

Jeanette Sylvester, Resident

Mrs. Sylvester comments that there is a development agreement in place. The Town has a parcel of land that the Sylvestres deeded to the Town to provide access. She notes that there is no access to their property and it is landlocked. They cannot get approval for an entrance permit from the County of Essex because the Town will not grant one. The Town has caused our County permit to be revoked after all our time and money spent.

The Deputy Mayor inquires if the Committee should reconvene to review alternatives. In order to move forward, the Town needs to facilitate through the County an entrance permit to the 10-acre property.

The Mayor responds that the Drainage Act provides specific parameters for the Court of Revision members and that the decisions are required to stay within the authority of the Court.

The Drainage Superintendent/ Engineering Technologist states that this is a communal procedure. Although the Sylvestres are a majority stakeholder, this meeting is to hear their complaint on their drainage assessment. He notes that the Committee can send the report back if it is in relation to an unfair assessment, but cautions the Committee on how to direct the Engineer in relation to technical aspects of the provisionally adopted report.

A Member remarks if the access permit was in place, the culvert would be required and included in the report. The assessment of \$51,000.00 and the \$4,000.00 to remove it would not be an issue. Mr. Sylvester explains that he does not have a permit. The Member recognizes that the permit is outside the authority of the Court of Revision, and asks the Engineer if the culvert can be added back into this report.

Mr. Hernandez recommends that a new and separate appointment be made to add this culvert. There are other factors that this report addresses where other culverts are failing, drainage issues and lands standing in water. The timeline on when these issues are addressed, he cannot guess. The costs to reinstate another report would be less since the engineer has completed most of the work.

Mr. Sylvester states that he needs the current drainage report adopted. He has a 40 acre farm that he claims has not had a crop in five years. It needs to be cleaned, desperately. The argument over this culvert and permit is between the Sylvestres and the Town. He understands the Court procedures and their powers under the Drainage Act. In good faith, he will assume that he can meet with the Town and discuss this permit issue further.

The Mayor notes that the decision made by the Court, can impact the taxpayers in the municipality. He cautions the Members that money has been expended and there is no special fund to use. This decision can be precedent setting and needs to be consistent with the Drainage Act. There is a sense of urgency to get the work completed.

A Member inquires if this culvert issue has been brought as far as it can go. The Drainage Superintendent/ Engineering Technologist indicates that there was discussion with the Sylvestres during this process. It was the Sylvestres decision to remove the culvert. The Town has gone as far as we can go with this culvert issue.

In response to an inquiry, the Chief Administrative Officer explains that there are two separate issues and the matter brought forth to the Court of Revision is clear. The other matter regarding the access permit has a separate process under the Planning Act, which would involve a development agreement that would come before Council for approval.

A Member remarks that the letter from the former Director Public Works & Environmental Services had an impact on the change of access and the land locking of the Sylvestres' property. This is more than a discussion on assessments. What would be the direction to Administration on having a meeting with the Sylvestres in order separate the two issues.

The Drainage Superintendent/ Environmental Technologist explained that the Sylvestres do not lose their appeal rights under the Drainage Act if the report is approved.

6. Communications

a. By-Law 2019-21

Being a by-law to provide for the repair and improvements to the East Town Line Drain (St. Clair Outlet).

Motion: CR - 07/19

Moved By Councillor Andrew Dowie

Seconded By Councillor Bill Altenhof

That Communications - For Information A as listed on the May 14, 2019 Court of Revision Agenda are received.

Carried

7. Reports

a. PWES-2019-19-Request to Re-Consider Engineer's Report - East Town Line Drain (St. Clair Outlet)

Motion: CR - 09/19

Moved By Councillor Andrew Dowie

Seconded By Councillor Bill Altenhof

That Report PWES-2019-19 Request to Re-Consider Engineer's Report - East Town Line Drain (St. Clair Outlet) be approved.

Carried

8. Adjournment

Motion: CR - 08/19

Moved By Councillor Tania Jobin

Seconded By Councillor Andrew Dowie

That there being no further business, the May 14, 2019 meeting of the Court of Revision now adjourn at 6:48 pm.

Carried

Gary McNamara, Mayor

Laura Moy, Clerk